FILE COPY

JAMES P. BROWN, JR.

IN THE

Supreme Court of the United States

October Term, 1960.

No. 422.

DEVONIAN GAS AND OIL COMPANY,

Petitioner,

v.

CECIL B. HIGHLAND, JR., Trustee of the Penfield Coal & Coke Company, an out of existence corporation, and E. C. METZNER, Lessee,

Respondents.

PETITIONER'S BRIEF IN REPLY TO THE COMMONWEALTH OF PENNSYLVANIA'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Michael A. Musmanno

Attorney for Petitioner

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The brief filed by the Commonwealth of Pennsylvania in opposition to our certiorari petition contains two assertions to which petitioner feels bound to respond, as follows:

1. At page 5 the Commonwealth's brief says:

> ". . . It is significant that the deed into petitioner conveyed only title to the surface of the land (114b of Supplemental Record). It claims that this deed was sufficient to vest title to the gas. It now takes the ambiguous and fallacious position that a similar deed conveying title in like manner was not sufficient to divest it of the gas."

Our answer to this is twofold. In the first place, the Supreme Court of Pennsylvania had a right to construe as it did "the deed into petitioner" (page 114b). That deed had no connection with any proceeding in a Federal court. In the second place, the deed in question expressly conveyed rights to the gas. See that part of the deed which appears at the middle of the next to the last paragraph of page 115b.

2. At page 6 the Commonwealth's brief says:

> ". . . The Receiver LeRoy W. Smith was discharged, and the Penfield Coal and Coke Company went out of existence. . . ."

In fact the Receiver has never been discharged, and the Penfield Coal and Coke Company has become inactive.

MICHAEL VON MOSCHZISKER,
Attorney for Petitioner.

Certificate of Service.

I certify that I have served by United States mail copies of the foregoing Petitioner's Brief in Reply to the Commonwealth of Pennsylvania's "Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania" upon the Commonwealth of Pennsylvania, by depositing five copies of the same in a United States mail box, with first-class postage prepaid, addressed to the following counsel of record at her post office address: Honorable Anne X. Alpern, Attorney General of Pennsylvania, State Capitol Building, Harrisburg, Pennsylvania.

MICHAEL VON MOSCHZISKER,
Attorney for Petitioner.